

BUCK A. ROGERS

IBLA 81-205

Decided November 18, 1981

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, declaring lode mining claims abandoned and void. W MC 176972 through W MC 176993.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claims -- Mining Claims: Recordation

Under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a)(2) (1976), the owner of unpatented mining claims located before Oct. 21, 1976, shall file in the proper BLM office on or before Oct. 22, 1979, or on or before Dec. 30 of each calendar year following the calendar year of such recording whichever date is sooner evidence of annual assessment work performed or a notice of intention to hold the mining claim or the mining claims shall be declared abandoned and void pursuant to 43 CFR 3833.4(a).

APPEARANCES: Buck A. Rogers, pro se.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Buck A. Rogers appeals from a November 28, 1980, decision of the Wyoming State Office, Bureau of Land Management (BLM), declaring his mining claims abandoned and void under section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), 43 CFR 3833.2-1(a) and 3833.4. The claims involved were located in

1973 and 1974. ^{1/} The mining claim location notices were filed with BLM on October 19, 1979. No filing of proof of assessment work or a notice of intention to hold was made on or prior to October 22, 1979. The decision of November 28, 1980, held the claims abandoned and void for failure to file either evidence of assessment work or a notice of intention to hold the mining claim on or prior to October 22, 1979.

[1] Section 314(a) of FLPMA, 43 U.S.C. § 1744(a) (1976), and the pertinent regulation, 43 CFR 3833.2-1(a) require that the owner of an unpatented mining claim located prior to October 21, 1976, shall on or before October 22, 1979, file, with BLM, evidence of annual assessment work performed during the previous assessment year, or alternatively, a notice of intention to hold the mining claim. Failure to file the required instruments is deemed conclusively to constitute an abandonment of the mining claims under section 314(c) of FLPMA, 43 U.S.C. § 1744(c) (1976), and 43 CFR 3833.4(a). Appellant failed to file evidence of annual assessment work or a notice of his intention to hold the claims as required by FLPMA, supra.

When appellant failed to file an affidavit of assessment work or a notice of his intention to hold the claims, BLM properly held the claims to have been abandoned and declared them void despite the fact that appellant had filed notices of location. Don Sagmoen, 50 IBLA 84 (1980); Victor DeLange, 48 IBLA 222 (1980); Juan Munoz, 39 IBLA 72 (1979); Public Service Company of Oklahoma, 38 IBLA 193 (1978).

In his statement of reasons appellant contends that he complied with the instructions on a 1980 assessment reminder postcard that he received from BLM. That postcard indicated that a 1980 notice of intention to hold or affidavit of annual assessment was required to be reviewed by BLM on or before December 30, 1980. Appellant alleges that he complied with the postcard reminder on November 25, 1980. Furthermore, he argues that calendar 1980 is the year "following the calendar year of such recording," citing the language of the November 28, 1980, decision. However, the regulation cited by BLM requires a filing "on or before October 22, 1979, or on or before December 30 of each calendar year following the calendar year of such recording, which ever date is sooner." (Emphasis added.) See 43 CFR 3833.2-1(a). By the express terms of the statute, 43 U.S.C.

<u>Serial Number</u>	<u>Claim Name</u>	<u>Located</u>	<u>Recorded</u>
1/ Mining Claim		Date	Date
W MC 176972 through	Empress Gems #1	10-26-73	10-19-79
W MC 176985	through #14		
W MC 176986 through	Empress Gems #23	10-26-74	10-19-79
W MC 176993	through #30		

§ 1744(a) (1976), appellant was required to make his initial filing of assessment work for his pre-FLPMA claims no later than October 22, 1979. This he did not do. Submission of evidence of assessment work on December 12, 1980, was clearly untimely. 2/

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

James L. Burski
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

Edward W. Stuebing
Administrative Judge

2/ In any event, the document submitted on Dec. 12, 1980, does not appear to be a copy of the assessment work filed in the local county which is required both by 43 U.S.C. § 1744(a) and (b) (1976) and 43 CFR 3833.2-2(a).

